Customs Bulletin

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and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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DEPARTMENT OF THE TREASURY
U.S Customs Service

NOTICE

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U.S. Customs Service

(T.D. 77–85)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C. March 8, 1977.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:	
February 21, 1977	Holiday
February 22, 1977	$0.2149
February 23, 1977	.2152
February 24, 1977	.2153
February 25, 1977	.2150
February 28, 1977	.2153
March 1, 1977	.2154
March 2, 1977	.2155
March 3, 1977	.2155
March 4, 1977	.2160
Iran rial:	
February 21, 1977	Holiday
February 22–February 24, 1977	$0.0143
February 25–March 3, 1977	.0141
March 4, 1977	.0143

Philippines peso:	
February 21, 1977	Holiday
February 22–February 24, 1977	$0.1345
February 25–March 3, 1977	.1340
March 4, 1977	.1345
Singapore dollar:	
February 21, 1977	Holiday
February 22, 1977	$0.4068
February 23, 1977	.4069
February 24, 1977	.4067
February 25, 1977	.4065
February 28, 1977	.4066
March 1, 1977	.4065
March 2, 1977	.4065
March 3, 1977	.4065
March 4, 1977	.4066
Thailand baht (tical):	
February 21, 1977	Holiday
February 22–March 4, 1977	$0.0490

(LIQ–3)

J. W. PAINTER,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 77–86)

Foreign Currencies—Certification of Rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 7, 1977.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 77–51 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs

purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Mexico peso:	
February 21, 1977	Holiday
February 22, 1977	$0.0445
February 23, 1977	.0444
February 24, 1977	.0444
February 25, 1977	.0439
February 28, 1977	.0441
March 1, 1977	.0440
March 2, 1977	.0442
March 3, 1977	.0442
March 4, 1977	.0440
Portugal escudo:	
March 1, 1977	$0.0258
March 2, 1977	.0257
March 3, 1977	.0257
March 4, 1977	.0258

(LIQ-3)

JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 77-87)

Countervailing Duties—Cotton Yarn from Brazil

Notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, as amended, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production or exportation of cotton yarn from Brazil

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—UNITED STATES CUSTOMS SERVICE

PART 159 — LIQUIDATION OF DUTIES

AGENCY: United States Customs Service.
ACTION: Final Countervailing Duty Order.
SUMMARY: This notice is to advise the public that an investigation has been completed which determined that the Government of

Brazil has given subsidies considered to be bounties or grants within the law to manufacturers who export cotton yarn to the United States. Consequently, additional duties in the amount of these subsidies will be collected along with regular Customs duties on shipments of cotton yarn from Brazil.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, Washington, D.C. 20229 (202–566–5492).

SUPPLEMENTARY INFORMATION: On September 14, 1976, a "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (41 FR 39053). The notice stated that it preliminarily had been determined that benefits had been received by the Brazilian manufacturers/exporters of cotton yarn which may constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act").

The cotton yarn is provided for in the Tariff Schedules of the United States under item numbers 300.60 through 302.98.

The notice stated that the programs under which these benefits were conferred included the granting to manufacturers/exporters of tax credits upon export, income tax reductions, and preferential financing; one other program concerning alleged regional incentives was being investigated which could constitute a bounty or grant within the meaning of the Act. Programs preliminarily determined not to be bounties or grants within the meaning of the Act included the exemption from certain indirect taxes upon exportation of the cotton yarn under consideration and the exemption from import duties and certain indirect taxes upon the importation of raw materials used in the production of cotton yarn to be exported. The notice provided interested parties 30 days from the date of publication to submit relevant data, views, or arguments, in writing, with respect to the preliminary determination.

After consideration of all information received, it is determined that exports of cotton yarn from Brazil are subject to bounties or grants within the meaning of section 303 of the Act. All conclusions reached in the preliminary determination remain unchanged and are adopted in this final determination. With respect to alleged regional incentives, cotton yarn exporters have not benefitted from these incentives available under Brazilian Decree Law No. 1426.

In accordance with section 303 of the Act, the amount of such bounties or grants has been estimated and declared to be 21.4 percent of the f.o.b. or ex-works price for export to the United States of cotton yarn from Brazil.

Effective on or after the date of publication of this notice in the FEDERAL REGISTER and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable cotton yarn imported directly or indirectly from Brazil, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of cotton yarn from Brazil are subject to a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

To be eligible to establish that a particular firm receives a bounty or grant smaller than that estimated in the above declaration, such firm or any importer of cotton yarn produced by such firm must request, within 30 days from publication of this notice in the FEDERAL REGISTER, that liquidation of all entries for consumption or withdrawal from warehouse for consumption of such dutiable cotton yarn from Brazil be suspended pending declarations of the net amounts of the bounties or grants paid. Only pursuant to such a request will liquidation be suspended.

Any merchandise subject to the terms of this order shall be deemed to have benefitted from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of cotton yarn manufactured in Brazil.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for Brazil the words "Cotton Yarn," in the column headed "Commodity," the number of this Treasury decision in the column headed "Treasury Decision," and the words "Bounty Declared-Rate" in the column headed "Action."

(R.S. 251, as amended, secs. 303, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624)).

(APP-4-05)

VERNON D. ACREE,
Commissioner of Customs.

Approved March 10, 1977,
JOHN H. HARPER,
Assistant Secretary of the Treasury.

[Published in the FEDERAL REGISTER March 15, 1977 (42 FR 14089)]

229-306—77——2

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1183)

THE UNITED STATES v. NORMAN G. JENSEN, INC., No. 76–16
(— F. 2d —)

1. CLASSIFICATION – LOG SKIDDING TRACTORS

Customs Court judgment sustaining appellee's protest that its log-skidding tractors are more properly classified under item 692.30, TSUS ("Tractors suitable for agricultural use, and parts thereof"), as claimed, rather than under item 692.35, TSUS ("Tractors . . . Other"), affirmed.

2. ID.

In determining whether the involved tractors are "suitable" for agricultural use, it is sufficient if there is a substantial use in skidding logs on farms, including tree farms.

3. LEXICON TERMINOLOGY

A major lexicon includes within the term "agriculture" "harvesting crops" and "the production of plants," with "plants" including "trees," and with "crops" obviously relating to "plants."

4. ID.

Major lexicons do not define "crop" on the basis of length of time to mature; thus, within the meaning of agriculture, there can be a "crop" of trees.

5. QUESTION OF LAW

Testimony on a question of law is not binding on Court of Customs and Patent Appeals.

6. CONGRESSIONAL INTENT

Congress has long intended "agriculture" to be most broadly defined and regarded the harvesting of a timber crop on a farm to be like any other crop in a general farm program.

7. ID.

The skidding of logs is part of the process of harvesting a timber crop; although "skidding" may be a function of the lumbering industry, this would not make the activity any less "agricultural"; nor does the fact that harvesting a timber crop on a farm is a forestry practice make such harvesting any the less "agricultural."

8. ITEM 692.30 TSUS

The use of appellee's tractors in skidding logs on farms, including tree farms, is part of the process of harvesting timber crops, and such use is "agricultural" for purposes of item 692.30, TSUS.

9. STANDARD INDUSTRIAL CLASSIFICATION MANUAL

Although the *Standard Industrial Classification Manual* (SICM) is a useful and helpful source of legislative history with respect to the tariff schedules when a nexus can be found between it and the tariff schedule provisions by the use of identical or similar phraseology, where the order, language, and phraseology of SICM differ from the provisions of the tariff schedules, SICM does not serve as a guide to the intention of Congress.

United States Court of Customs and Patent Appeals, March 10, 1977

Appeal from United States Customs Court, C.D. 4634

[Affirmed.]

Rex E. Lee, Assistant Attorney General, *David M. Cohen*, Chief Customs Section, *Steven P. Florsheim*, attorneys of record, for appellant.

Barnes, Richardson and Colburn, attorneys of record, for appellee, *Joseph Schwartz* and *James S. O'Kelly*, of counsel.

[Oral argument February 2, 1977 by Steven P. Florsheim for appellant and by James S. O'Kelly for appellee]

Before MARKEY, *Chief Judge*, RICH, BALDWIN and MILLER, *Associate Judges*, and PHILIP NICHOLS, Associate Judge, United States Court of Claims.

MILLER, Judge.

[1] This appeal is from the judgment of the United States Customs Court, 76 Cust. Ct. —, C.D. 4634, 408 F. Supp. 1379 (1976), sustaining appellee's claim that its merchandise is entitled to entry free of duty under item 692.30, Tariff Schedules of the United States ("TSUS"), instead of being subject to duty under item 692.35, TSUS, as classified. We affirm.

The pertinent statutory provisions are as follows:

PART 6.—TRANSPORTATION EQUIPMENT

* * * * * * *

Subpart B.—Motor Vehicles

* * * * * * *

	Tractors (except tractors in item 692.40 and except automobile truck tractors), whether or not equipped with power take-offs, winches, or pulleys, and parts of such tractors:	
692.30	Tractors suitable for agricultural use, and parts thereof	Free
692.35	Other	5.5% ad val. (as modified by T.D.68–9)

The merchandise consists of tractors, denominated " 'Tree Farmer' Skidder Machines" in appellee's protest and "Tree Farmer" by the manufacturer. They are predominantly [1] used to "skid" [2] logs from the site where trees are felled. Their design and construction make them particularly suitable for this use: four large rubber-tired wheels, four-wheel drive, articulated (hinged in the middle) steering, logging arch and winch, and high ground clearance.

The Customs Court held that the involved tractors are suitable for agricultural use for purposes of item 692.30, TSUS, on the basis that the harvesting of a timber crop is an agricultural pursuit and skidding of logs is a part of that harvesting.

Appellant's position is that this holding was erroneous, because: (1) even assuming that harvesting a timber crop is a part of forestry and that logging is a part of that harvesting, neither logging nor forestry comes within the common or commercial meaning [3] of the tariff term "agricultural"; (2) even if forestry is an agricultural pursuit, logging does not fall within the practice of forestry; and (3) Congress did not intend that logging tractors be included within the tariff provision for tractors suitable for agricultural use.

This court, in interpreting the words "suitable for use," has stated that

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[1] Appellee's witness, Harold Murphy, president of an equipment company in Alabama, which had purchased approximately 300 Tree Farmer log skidders, testified that 95 percent of their use was for skidding logs.

[2] "Skidding" is the dragging of a severed tree trunk (log) from the area in which the tree was growing to the "landing area"—a collection point for logs for their further transportation to a sawmill, papermill, or woodyard.

[3] Appellant calls attention to the presumption that the common and commercial meanings of "agricultural" are identical in view of the absence from the record of any indication to the contrary.

> suitability does not require that the merchandise be chiefly used for the stated purpose . . . but it does require more than "* * * evidence of a casual, incidental, exceptional, or possible use. * * *" . . . There must be a substantial actual use . . . .

Keer, Maurer Co. v. *United States*, 46 CCPA 110, 114, C.A.D. 710 (1959).[2] Thus, in determining whether the involved tractors are "suitable" for agricultural use, it is not necessary to consider their use in skidding logs in national forests (16 U.S.C. 471 et seq.) or in state forests (16 USC 567a et seq.). It would be sufficient if there is a substantial use in skidding logs on farms, including tree farms.[4] Two major lexicons that were contemporaneous to the enactment of the TSUS define "farm" as follows:

> *Webster's Third New International Dictionary* (1961)
> *farm* . . . any tract of land (whether consisting of one or more parcels) devoted to agricultural purposes . . . .
> *Funk & Wagnalls New Standard Dictionary* (1963)
> *farm 1.* a tract of land . . . devoted to agriculture . . . .

In *Border Brokerage Co.* v. *United States*, 65 Cust. Ct. 277, 289, C.D. 4089, 343 F. Supp. 1396, 1404 (1970),[5] it was noted that "in 1941 a major timber company began the practice of tree farming which has become widespread." The opinion concluded:

> The cultivation of trees in a nursery or tree farm is clearly embraced within the meaning of agriculture as described in dictionaries and technical sources.

Appellee's witness, Harry Fisher, president of a logging company in Minnesota, defined a "tree farm" as "a plantation where trees have been planted for the production of timber." He testified that he had seen timber being harvested on a tree farm by Tree Farmer log skidders. Appellee's witness, Walter Furgat, president of a tractor equipment dealership in Vermont (its territory was Vermont, New Hampshire, Massachusetts, and Connecticut), which had sold some 75 new and 200 used Tree Farmer log skidders to "farmers and woods-

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[4] Appellant argues that the tariff term "agricultural" relates to farm equipment utilized by a farmer on a farm, for manipulating farm crops. However, we agree with the Customs Court that "it matters not who uses the Tree Farmer, that is, whether the trees are harvested by commercial loggers, farmers, or itinerant aborers." Appellant cites the quotation from *Staalkat of America, Inc.* v. *United States*, 59 Cust. Ct. 241 C.D. 3130 (1967), which appeared in this court's opinion in *Sortex Co. of North America* v. *United States*, 56 CCPA 41, 46, C.A.D. 951, 410 F. 2d 443, 447 (1969), namely:

> [I]t appears that the provisions for free entry for agricultural implements, not provided for specially in tariff acts, include on-farm equipment for handling, packing, preparing for market, crops produced on the farm . . . .

It is noted, however, that the Customs Court carefully used the word "include" and, thereby, did not necessarily restrict application of the provisions to such equipment.

[5] *Aff'd*, 59 CCPA 151, C.A.D. 1058, 461 F. 2d 1383 (1972) wherein this court stated that it was "in full agreement with the opinion of the Customs Court" (except for a minor point not here relevant). *Id.* at 152, 461 F. 2d at 1384. Accordingly, quotations from that opinion accurately reflect this court's views.

men," testified that over a ten-year period he had seen farmers use the skidders to bring out full-length trees from the woods on their own land (including dairy farms). Appellee's witness, Horace Johnson, an equipment dealer in South Carolina, who had sold around 150 Tree Farmer log skidders over a five-year period, testified that he had observed the skidders being used "every day" and that their use included harvesting (skidding) the crop 10 or 15 years after planting. On cross-examination he stated: "We had a natural growth of timber years ago. Now, we have the farming of timber." None of appellant's witnesses contradicted the above-described uses, and its witness, Samuel Hudson, a County Forester for two counties under the Department of Forest and Parks of the State of Vermont, testified that he had seen a log skidder being used on a wood lot connected with a farm.

As noted by the Customs Court, *The Book of the States* (Council of State Governments, Lexington, Ky.) Vol. XX (1974–75) 488, shows that 60 percent of the Nation's commercial forest land "is in farms and other nonindustrial holdings involving over 4 million landowners." [6] The significance of farm forest land is shown by the report of the House Committee on Agriculture (H.R. Rep. No. 536, 81st Cong., 1st Sess. 10 (1949)), accompanying H.R. 2296, which was enacted October 26, 1949 (Pub. L. No. 392, 63 Stat. 909).[7] The report stated:

> Out of the 461,000,000 acres of commercial forest area in the United States, 344,973,000 acres are under private ownership. . . . [O]nly 50,672,000 acres of this privately owned land are in large forest tracts. . . . 261,385,000 acres are in small tracts of less than 5,000 acres each. These small tracts of forest land are owned by 4,225,000 different private owners, and the average size of the individual holdings is only 62 acres. The Forest Service estimates that approximately 85 percent of the privately owned forest land in the United States is in tracts of less than 100 acres each. Part of these tracts are in contiguous forest areas, but many others are in farm wood lots and small forest areas scattered throughout the farming regions of the United States.

Two sections of the Act of October 26, 1949, which are pertinent to our analysis were codified as a part of Chapter 3—FORESTS;

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[6] We also note an exhibit which is a copy of the April 1974 issue of FOREST FARMER, The Magazine of Forestry in Practice, published by the Forest Farmers Association, which is stated to be "a grassroots organization of timberland owners."

[7] Amending the Act of June 7, 1924 (To provide for the protection of forest lands . . . and for other purposes in order to promote the continuous production of timber on lands chiefly suitable therefor), Pub. L. No. 270, 43 Stat. 654. The House Report was attached to and made a part of the report of the Senate Committee on Agriculture and Forestry (S. Rep. No. 611, 81st Cong., 1st Sess. (1949)).

FOREST SERVICE; REFORESTATION; MANAGEMENT, under Title 16.—CONSERVATION. They provide as follows:

> § 567. Cooperation by Secretary of Agriculture with States in procuring, and so forth, forest-tree seeds and plants . . . .
>
> The Secretary of Agriculture is authorized and directed to cooperate with the various States in the procurement, production, and distribution of forest-tree seeds and plants, for the purpose of establishing forests, windbreaks, shelter belts, and farm wood lots upon denuded or nonforested lands within such cooperating States . . . to the end that forest-tree seeds or plants so procured, produced, or distributed shall be used effectively for planting denuded or nonforested lands in the cooperating States and growing timber thereon . . . .
>
> § 568. Cooperation by Secretary of Agriculture with States in establishing, and so forth, wood lots, shelter belts, windbreaks . . . .
>
> The Secretary of Agriculture is authorized and directed, in cooperation with the land grant colleges and universities of the various States or, in his discretion, with other suitable State agencies, to aid farmers through advice, education, demonstrations, and other similar means in establishing, renewing, protecting, and managing wood lots, shelter belts, windbreaks, and other valuable forest growth, and in harvesting, utilizing, and marketing the products thereof. . . .

Also to be noted is 16 U.S.C. 562a, enacted July 3, 1926, as Pub. L. No. 488, 44 Stat. 838 ("An Act To authorize the establishment and maintenance of a forest experiment station in the Ohio and Mississippi Valleys"), which authorizes the Secretary of Agriculture, *inter alia* "to determine the best methods for the growing, management, and protection of timber crops on forest lands and farm wood lots." The Senate Committee Report (S. Rep. No. 891, 69th Cong., 1st Sess. 1 (1926)), quoted a letter of approval of the bill (S. 3405) from the Acting Secretary of Agriculture, stating:

> Standing timber in the United States has been one of the most stable commodities in value, much more so in fact than of any other product of the land. Timber crops raised on farm woodlots should therefore be of great importance as a phase of diversified farming in making possible returns to the farmer during times of agricultural depression. I regard the establishment of an Ohio-Mississippi Valley station as of particular significance and importance for this reason. It offers the possibility in my judgment of constructive aid to agriculture of great importance.

The House Committee in its report (H.R. Rep. No. 1430, 69th Cong., 1st Sess. (1926)), quoted a similar letter from the Acting Secretary

and said (p. 2): "The reason for setting this region [Ohio-Mississippi Valleys] off from the territories assigned to other stations is the occurrence of its forests almost exclusively in farm wood lots."

In view of the foregoing, we are satisfied that there is a substantial use of Tree Farmer Log skidders in skidding logs on farms, including tree farms.

The key issue is whether such use is "agricultural" for purposes of item 692.30, TSUS. The two previously-cited major lexicons contain the following definitions:

Webster's Third New International Dictionary (1961)

> *agriculture—a*: the science or art of cultivating the soil, harvesting crops, and raising livestock: tillage, husbandry, farming *b*: the science or art of the production of plants and animals useful to man and in varying degrees the preparation of these products for man's use and their disposal (as by marketing).

Funk & Wagnalls New Standard Dictionary (1963)

> *agriculture . . . 1.* The cultivation of the soil for food-products or any other useful or valuable growth of the field or garden; tillage; husbandry; also, by extension, farming, including any industry practiced by a cultivator of the soil in connection with such cultivation, as forestry, fruit-raising, breeding and rearing of stock, dairying, market-gardening, etc.

[3] It is to be noted that Webster's definition includes "harvesting crops" and "the production of plants," which includes trees.[8] Taken in context, "crops" obviously relates to "plants." [9] *Funk & Wagnalls'* definition includes forestry. The tariff term "agricultural" is old, going back at least to its use in the phrase "Agricultural implements," which appeared under the Free List in paragraph 391 of the Tariff Act of 1913, Pub. L. No. 16, 38 Stat. 114, 152. Contemporaneous editions of the above-cited major lexicons defined "agriculture" as follows:

Webster's New International Dictionary (1913)

> *agriculture . . .* Art or science of cultivating the ground, including harvesting of crops and rearing and management of live stock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In this broad use it includes farming, horticulture, and forestry . . . .

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[8] *Webster's, supra*, defines "tree" as: "*1 a*: a woody perennial plant . . . ."

[9] [4] Appellant argues that in agriculture a "crop" is realized about once a year, while in forestry a stand of trees destined for the lumber or pulp industry requires a much greater period of time to mature. However, the cited lexicons draw no distinction on the basis of length of time for a crop to mature; moreover, as pointed out in Wackerman, Hagenstein & Michell, *Harvesting Timber Crops* 7 (1966), "most forests are managed for an even harvest flow year-by-year."

Funk & Wagnalls Standard Dictionary (1913)

agriculture [definition identical to that in 1963 edition of *New Standard Dictionary*]

Although the word "forestry" was subsequently dropped from the *Webster's* definition, while *Funk & Wagnalls* continued to include it, "harvesting crops" and "the production of plants" remained in the definition.[10]

[6] That Congress has long intended "agriculture" to be most broadly defined is shown by the Act of May 15, 1862, ch. 72, 12 Stat. 387, establishing the Department of Agriculture, which provided, *inter alia:*

> That there is hereby established at the seat of Government of the United States a Department of Agriculture, the general designs and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word . . . .

Similar language appears in the law today (7 U.S.C. 2201). The intent that "agriculture" be most broadly defined is further shown by 7 U.S.C. 427, enacted August 14, 1946, as Pub. L. No. 733, 60 Stat. 1082 ("An Act to Provide for further research into basic laws and principles relating to agriculture . . ."), which provides:

> It is hereby declared to be the policy of the Congress to promote the efficient production and utilization of products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum employment and national prosperity. It is also the intent of Congress to assure agriculture a position in research equal to that of industry which will aid in maintaining an equitable balance between agriculture and other sections of our economy. For the attainment of these objectives, the Secretary of Agriculture is authorized and directed to conduct and to stimulate research into the laws and principles underlying the basic problems of agriculture in its broadest aspects, including . . . research relating to the conservation, development, and use of land, forest, and water resources for agricultural purposes . . . .

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[10] Appellant points out that, of the fourteen witnesses who testified, four were employed as loggers and "were in agreement that, as loggers, they did not work on farms and did not consider themselves to be farmers." From this, appellant argues that "the people engaged in logging as a commercial endeavor do not consider their work to be agricultural in nature. "[5] However, such testimony on a question of law can hardly be considered binding on this court. *United States* v. *O. Brager-Larsen*, 36 CCPA 1, 3, C.A.D. 388 (1948). The same is to be said for the testimony of one of appellant's witnesses, a union official, that unionized skidder operators are members of the International Woodworkers of America, which does not represent agricultural or farm workers.

Such Congressional intent is similarly shown by 7 U.S.C. 361b, enacted August 11, 1955, as Pub. L. No. 352, 69 Stat. 671 ("An Act . . . relating to the appropriation of Federal funds for the support of agricultural experiment stations . . ."), which provides, in part, as follows:

> It shall be the object and duty of the State agricultural experiment stations through the expenditure of the appropriations hereinafter authorized to conduct original and other researches, investigations, and experiments bearing directly on and contributing to the establishment and maintenance of a permanent and effective agricultural industry in the United States, including researches basic to the problems of agriculture in its broadest aspects . . . .

See *United States* v. *S.S. Perry*, 25 CCPA 282, 286, T.D. 49395 (1938). Further evidencing this intent and, in our view, decisive of the key issue [11] in this case is the following statement in the previously-cited 1949 House Committee on Agriculture Report, *supra* at 10–11:

> The time has come, however, when we must depend for much of our future timber supplies on these *small forests and woodlands where trees are planted and harvested just as any other crop.* To assure ourselves an adequate supply of timber products, *the farmers who own these small areas of woodland* must be convinced that trees can be produced as a profitable crop to them, and assist[ed] in establishing this type of forest.
>
> * * * * * * *
>
> The general lack of productive management of small forest properties is the core of this Nation's forest problem. Three fourths of our commercial forest land is privately owned; 76 percent of this is in more than 4,000,000 small properties averaging only 62 acres each; *about one-half of these small-area forest lands are on farms* . . . .
>
> * * * * * * *
>
> Under the authority of this section, extension foresters working through the State agricultural colleges and in cooperation with the county agents, will carry on a forestry educational program. *Working with farmers and farm groups,* they will perform the important function of interesting farmers in forestry and sound forest management, showing them how *timber can be made a profitable crop for them* and how it fits into their soil conservation and *general farm program,* and persuading farmers to handle their timber crop with the same businesslike methods they apply to other crops. [Emphasis supplied.]

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[11] [7] The record clearly supports a conclusion that the skidding of logs is a part of the process of harvesting a timber crop. Although appellant argues that log skidding is "logging" and that "logging" is a function of the lumbering industry, this would not make the function any less "agricultural." Nor does the fact that harvesting a timber crop on a farm is a forestry practice make such harvesting any the less "agricultural." Long ago this court observed that "agriculture" in its broad application may extend into and include elements of . . . *allied* industries and pursuits . . . ." *United States* v. *Boker & Co.*, 6 Ct. Cust. Appls. 243, 244, T.D. 35472 (1915). In *Border Brokerage, supra*, 65 Cust. Ct. at 286, 343 F. Supp. at 1402, it was stated that lumber is "admittedly an agricultural product."

[8] In light of the long-standing intent of Congress that "agriculture" be most broadly defined and of the legislative history of current laws showing that Congress has, since well before enactment of the TSUS, regarded the harvesting of a timber crop on a farm to be like any other crop in a general farm program, we hold that the use of Tree Farm log skidders in skidding logs on farms, including tree farms, is part of the process of harvesting timber crops and that such use is "agricultural" for purposes of item 692.30, TSUS.

In urging that "Congress did not intend logging tractors to be included within the tariff provision for tractors suitable for agricultural use," appellant relies on the *Standard Industrial Classification Manual* (1957) ("SICM") showing that logging activities are categorized separately (under Major Group 24, Lumber and wood products) from agricultural activities (under Major Group 01); also that logging equipment is an exemplar under Group No. 353 for Construction, Mining, and Materials Handling Machinery and Equipment, whereas Farm Machinery and Equipment is covered separately under Group No. 352. In this connection, we note the following statement in the *Tariff Classification Study, Submitting Report* 8 (1960):

> The "Brussels Nomenclature" and the "Standard Industrial Classification Manual" exerted the greatest influence [from among the number of tariff, commodity, and industrial classification systems studied] on the arrangement of the proposed revised schedules.

[9] However, we agree with the Customs Court's statement in *M. Hohner Inc.* v. *United States*, 63 Cust. Ct. 496, 500–01, C.D. 3942 (1969), regarding the usefulness of the Brussels Nomenclature (which is equally applicable to the SICM):

> It is true that the *Brussels Nomenclature* is a useful and helpful source of legislative history with respect to the tariff schedules when a nexus can be found between it and the tariff schedule provisions by the use of identical or similar phraseology. . . . On the other hand where the order, language and phraseology of *Brussels* differ from the provisions of the tariff schedules, *Brussels* does not serve as a guide to the intention of Congress.

Cf. F.L. Smidth & Co. v. *United States*, 56 CCPA 77, 83–84, C.A.D. 958, 409 F. 2d 1369, 1375 (1969). We find no "nexus" (and appellant has not shown any) between the cited groupings in the SICM and the TSUS. Indeed, the TSUS items in issue (692.30 and 692.35) both appear under Subpart B.—Motor Vehicles, in Part 6, Transportation Equipment, of Schedule 6, Metals and Metal Products. Although logs and timber (item 200.35) are classified in the TSUS under Schedule 2, Wood and Paper, and not under Schedule 1, Animal and Vegetable

Products, this does not evidence an intention that logs should be considered other than an agricultural product—any more than the classification of wool, cotton, and other vegetable fibers under Schedule 3, Textile Fibers and Products, indicates that these products should be so considered. Accordingly, appellant's reliance on the SICM is misplaced.

The Tree Farmer log skidders are "suitable for agricultural use" for purposes of item 692.30, TSUS.

The judgment of the Customs Court is *affirmed.*

(C.A.D. 1184)

THE UNITED STATES v. ATAKA AMERICA, INC., No. 76–17 (— F. 2d —)

1. CLASSIFICATION OF IMPORTS – FIBERSCOPES

Customs Court decision sustaining protest to classification of fiberscopes as "Other" optical instruments under item 709.05, TSUS, reversed.

2. ID. – OPTICAL INSTRUMENTS

The term "optical instruments" encompasses devices which act upon or interact with light, which permit or enhance human vision through the use of one or more optical elements, and which utilize the optical properties of the device in something beyond a "subsidiary" capacity.

3. ID. – COMPETING TARIFF PROVISIONS

In resolving questions of classification, the primary inquiry is focused on the competing tariff provisions.

4. ID.

Where the competing tariff provisions are "Optical instruments" and "Other," the question is not whether the imported fiberscopes are "more than" optical instruments but, rather, whether the imported fiberscopes are "Other" than optical instruments.

United States Court of Customs and Patent Appeals, March 10, 1977

Appeal from United States Customs Court, C.D. 4637

[Reversed.]

Rex E. Lee, Assistant Attorney General, *David M. Cohen*, Chief, Customs Section, *Jerry P. Wiskin*, attorneys of record, for appellant.

Rode & Qualey, attorneys of record, for appellee, *Ellsworth F. Qualey*, of counsel.

Satterlee & Stephens, attorneys of record, for Amicus Curiae, *Henry J. Formon, Jr.*, of counsel.

[Oral argument on February 2, 1977 by Jerry P. Wiskin for appellant and by Ellsworth F. Qualey for appellee]

Before MARKEY, *Chief Judge*, RICH, BALDWIN and MILLER, *Associate Judges*, and PHILIP NICHOLS, *Associate Judge*, United States Court of Claims.

MARKEY, Chief Judge.

[1] This is an appeal by the Government from a judgment of the United States Customs Court, 76 Cust. Ct. 70, C.D. 4637, 411 F. Supp. 779 (1975), sustaining Ataka's protest of the classification of imported goods known as fiberscopes under item 709.05, Tariff Schedules of the United States (TSUS), as "Other" optical instruments. Ataka claimed, and the Customs Court held, classification to be proper under item 709.17, TSUS, as "Other" electro-medical apparatus. We reverse.

The involved TSUS provisions are:

Medical, dental, surgical and veterinary instruments and apparatus (including electro-medical apparatus and opthalmic instruments), and parts thereof:		
Optical instruments and appliances, and parts thereof:		
* * * * * * *		
709.05	Other	25% ad val.
* * * * * * *		
Other:		
* * * * * * *		
Electro-medical apparatus, and parts thereof:		
* * * * * * *		
709.17	Other	6% ad val.

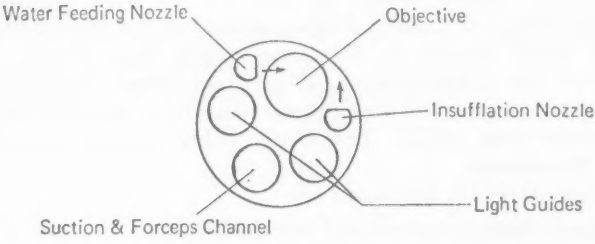
Description of the Goods

The imported goods were invoiced as "Olympus Upper GI Photo fiberscopes, Model GIF–D, without CLE and FIT," that is, direct vision (–D) gastrointestinal fiberscopes without accessory light source-power supply or medical camera.

We reproduce the accurate and concise description of the goods which appears in the Customs Court opinion, with the addition of an illustrative figure taken from Ataka's catalog:

> From the exhibits and the testimony introduced, it appears that the instrument in question, commonly referred to as a fiberscope, consists of three major parts: a flexible insertion tube, a control unit, and a light guide portion. The tube portion of the instrument, designed to be inserted through the mouth and throat of the individual for the purpose of examining the esophagus, stomach and gastrointestinal areas of the body, consists of six channels: (1) a channel for suction, biopsy and cytology purposes;

(2) a channel for visual observation consisting of the lens and a bundle of glass fibers; (3) and (4) channels for light illumination; (5) a channel for water, and (6) a channel for air.



The second portion of the instrument, referred to as a control unit, possesses an angle control mechanism which directs the tip of the fiberscope and also includes a mechanism for the control of air, water and suction, a biopsy port or opening and an eyepiece lens. The third portion of the instrument, a light guide portion, can be attached to a light source and power supply—a separate instrument described as model CLE. The power supply unit, although not a part of the imported merchandise in question, is suitable only for use with the fiberscope and provides the electricity required for the production of light and the operation of the instrument. The medical camera, referred to as FIT, although not a part of the imported merchandise in question, likewise is suitable only for use with the fiberscope. The light which is produced initially in the power supply unit is transmitted through the bundle of glass fibers within the fiberscope providing the illumination necessary for visual observation as well as the utilization of the other capabilities of the instrument hereinbefore described.

From the expert medical testimony presented at the trial of the within action, all witnesses agreed that the extent of use of the additional capabilities of the instrument in question depended in large part upon the custom and practice in each individual hospital. Although the defendant's medical witness indicated that in the New York Veterans Administration Hospital the use of the biopsy and photographic capabilities of the instrument was not as extensive as elsewhere, the medical testimony of the

plaintiff supports the finding that in all instances in which the fiberscope is used for diagnostic purposes by that witness, the biopsy, cytology, suction and photographic capabilities of the instrument in question, are utilized from 80% to 100% of the time it is in operation.

It was further pointed out in the medical testimony presented that whereas the single function of an instrument such as an endoscope permits only a direct observation of the stomach and gastrointestinal areas, the added functions and capabilities of the fiberscope have caused an advancement in medical techniques which previously had been unknown and unavailable and which ultimately will permit further advanced techniques—not only diagnostic but also therapeutic in character. [76 Cust. Ct. at—, 411 F. Supp. at 780–81].

The Customs Court

The Customs Court, relying upon our opinion in *United States* v. *Oxford International Corp.*, 62 CCPA 102, C.A.D. 1154, 517 F. 2d 1374 (1975), framed the determinative question to be: "does the article possess 'a second significant function * * * justifying the application of the "more than" doctrine.' " Noting that the subject fiberscopes, in addition to their optical function, possessed the additional functions of enabling the performance of biopsies, cytologies, and photography, the court held the fiberscopes to be "more than" medical-optical instruments.

Having determined the liquidation classification to have been improper, the court held that the Government had admitted the correctness of Ataka's claimed classification in its pleadings. Both portions of Ataka's dual burden of proof were thus found to have been satisfied.[1]

Arguments

The Government argues that the Customs Court ignored both statutorily and judicially stated law in failing to sustain the classification of the subject fiberscopes as "Other" optical instruments. It urges that the fiberscopes fulfill the statutory definition of optical instruments in headnote 3 and the judicial definition thereof in *Engis Equipment Co.* v. *United States*, 62 Cust. Ct. 29, C.D. 3670, 294 F. Supp. 964 (1969). Moreover, the Government argues, the Customs Court failed to consider General Interpretative Rule

[1] Though the Government argues strongly against the presence of any binding admission, we need not and do not reach that issue herein.

10(c)(ii)[2] in its application of the "more than" doctrine. The Government's position is that because Rule 10(c)(ii) requires a comparison between tariff provisions of equal status, the Customs Court should have compared the immediately preceding superior headings to items 709.05 and 709.17. Such a comparison would have resulted in comparing "Optical instruments * * *: * * * Other" with "Other * * * Electro-medical apparatus:" i.e., non-optical instruments. The Government argues that a fiberscope "cannot be both 'more than' optical, *i.e.*, containing at least one optical feature, and 'other' than optical, *i.e.*, containing no optical feature." Accordingly, the Government contends that the Customs Court failed to perceive the correct legal issue herein.

In support of the Government's position, American Cystoscope Makers, Inc., as *amicus curiae*, points out that the superior heading to items 709.05 and 709.17, TSUS, is virtually identical to Section 90.17, *Brussels Nomenclature* (1955), and that the *Explanatory Notes to the Brussels Nomenclature* distinguish between optical medical instruments and electro-medical apparatus.

Ataka argues that headnote 3 (see *infra*) specifically excludes from the definition of optical instruments those devices in which optical features perform a subsidiary function. Ataka describes the primary function of the imported fiberscopes as the taking of biopsies, cytologies and photographs and the optical function as subsidiary thereto. Because the taking of biopsies, cytologies and photographs are significant non-optical functions facilitated by the fiberscope, Ataka urges that the Customs Court was correct in applying the "more than" doctrine. Additionally, Ataka argues that Congress intended that optical instruments which depend upon electricity for their operation be classified as electro-medical apparatus under item 709.17, RSUS, relying upon a statement by the Tariff Commission (*Tariff Classification Study, Second Supplemental Report* (1962) at 5) as indicating that otoscopes, the subject of *Empire Findings Co.* v. *United States*,

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[2] The Rule provides:

10. *General Interpretative Rules.*—For the purposes of these schedules—

* * * * * * *

(c) an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; but, in applying this rule of interpretation, the following considerations shall govern:

* * * * * * *

(ii) comparisons are to be made only between provisions of coordinate or equal status, i.e., between the primary or main superior headings of the schedules or between coordinate inferior headings which are subordinate to the same superior heading;

44 Cust. Ct. 21, C.D. 2148 (1960), are to be classified under item 709.17, TSUS.[3]

OPINION

Congress, in headnote 3, Schedule 7, Part 2, has defined the term "optical instruments":

Part 2 headnotes:

* * * * * * *

> 3. The term "*optical instruments*", as used in this part, embraces only instruments which incorporate one or more optical elements, but does not include any instrument in which the incorporated optical element or elements are solely for viewing a scale or for some other subsidiary purpose.

Respecting headnote 3, the *Tariff Classification Study*, Schedule 7 (1960) at 140 explains that:

> Headnote 3 includes a definition of the term "optical instruments". This definition was not in the draft published for public hearings. It is believed that this definition substantially conforms with existing customs practice.

"Existing customs practice" was summarized by the Customs Court in *Engis*, supra.[4] Therein, the Customs Court found the following characteristics necessary to qualify a device as an "optical measuring instrument";

> First, the device must function in such manner that employment of its optical features is dominant or primary, as compared to the role of its other components.
>
> * * * * * * *
>
> Second, the device's optical elements must be essential to its operation; that is, to be considered an optical measuring instrument, the device cannot be operated in its intended manner without the optical components.
>
> * * * * * * *
>
> Third, optical measuring instruments must, in performing their intended function of measurement, act upon, deal with, or route rays of light. This interaction between light and such optical elements as lenses, prisms and mirrors normally manifests itself

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[3] Ataka presented an additional argument to the effect that item 709.05, TSUS, was not intended to cover instruments which depend upon electricity for their operation. The opinion of the Customs Court makes no reference to this argument. We find it without merit.

[4] As the Customs Court stated in *Amaco, Inc.* v. *United States*, 74 Cust. Ct. 172, C.D. 4602 (1975), and *Norman G. Jensen, Inc.* v. *United States*, 77 Cust. Ct. —, C.D. 4668 (1976), it is the statute rather than the criteria of *Engis* which governs the classification of an article as an "optical instrument." The *Engis* criteria, though neither controlling nor exhaustive, do provide an appropriate compendium of "optical instrument" characteristics. A number of the criteria set forth herein were utilized by the Customs Court in delineating the characteristics of an "optical instrument" under the TSUS in *Parson's Optical Laboratories* v. *United States*, 68 Cust. Ct. 143, C.D. 4351 (1972).

> in divergence, convergence, reflection, polarization, or merely conveyance of light rays.
>
> * * * * * * *
>
> Finally, the optical system of the instrument must aid human vision or create for inspection a picture or image of some object. [62 Cust. Ct. at 32, 294 F. Supp. at 966–67, citations omitted].

None of the foregoing criteria is determinative in every case, but they are useful in determining the statutory meaning of "optical instrument(s)" **[2]** Broadly, therefore we conclude that the term "optical instrument(s)" encompasses devices which act upon or interact with light, which permit or enhance human vision through the use of one or more optical elements, and, in light of headnote 3, which utilize the optical properties of the device in something beyond a "subsidiary" capacity.[5] See *United States* v. *American Machine & Metals, Inc.*, 29 CCPA 137, C.A.D. 183 (1941).

Considering first the insertion tube, it is clear that five of its six channels, interact with light or function solely or primarily to permit or enhance human vision. One channel, the viewing channel, functions solely to provide a visual image of the viscus under examination, permitting visualization of an area otherwise impossible to view with the naked eye.[6] Two other channels function solely to introduce light without which vision would be impossible. A fourth channel operates to direct water across the objective lens of the viewing channel to maintain freedom from vision-obstructing matter. A fifth channel, the air channel, operates to insufflate the viscus during examination and to keep the wall of the organ from pressing against the lens and destroying vision.

The sixth channel, the suction channel, also aids the viewing function. In addition to providing a passageway for biopsies and cytologies, the suction channel is used for extracting fluid from the organ which would otherwise impair vision.

A control unit operates to position the distal tip of the insertion tube, allowing the viewer to observe the desired portion of the viscus under examination. The control unit also regulates water, air and suction which, as above indicated, aid the viewing function. Though the suction control permits biopsy and cytology samples to be taken, the control unit, in major part, operates as an integrant to the viewing function of the device.

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[5] The Customs Court indicated that drawing a distinction in this case between a dominant and some lesser function "may easily lead one into a never-ending circle." However, the statutory distinction is between "subsidiary" and not "subsidiary."

[6] This channel consists solely of optical elements, including an objective lens, a fiber optic bundle and a viewing lens functioning as a magnifier.

Similarly, the light guide portion, designed to be attached to a light source—power supply, directs the light essentially to aid the viewing function.

It remains to be determined whether, as Ataka argues, the optical features of the instrument act in a subsidiary capacity to the biopsy-cytology functions, thereby excluding the fiberscopes from classification as "optical instruments," pursuant to headnote 3.

Testimony adduced at trial established that visualization is essential in the performance of biopsies and cytologies with the imported fiberscope. Ataka's argument that, in the performance of biopsies and cytologies, the optical function is subsidiary to the biopsy-cytology operation, though supported in part by the opinion testimony of one witness, is without merit. The imported device must be considered as a whole. Whether a feature be dominant or subsidiary cannot be determined by isolating a particular employment of the device. The use frequency of the biopsy and cytology capabilities of the fiberscopes varied from physician to physician and from hospital to hospital. It was undisputed, however, that all who used the instrument, for any purpose, used it to *view* the interior of a body organ. Depending upon the situation, that visual operation may be all that is performed. It is only after visual examination that a decision to take a biopsy or cytology specimen can be made.

To term optical features merely subsidiary to biopsy-cytology features, when the latter *require* the former, and when the latter are not always used and the former are always used, would be contrary to reason. Accordingly, we hold the imported fiberscopes meet the definition of "optical instruments" in headnote 3. Ataka, however, urges that the imported fiberscopes are "more than" optical instruments.

[3] In resolving questions of classification, the primary inquiry is focused on the competing tariff provisions. General Interpretative Rule 10(c)(ii) requires a comparison between tariff provisions of coordinate or equal status. The main superior provision, "Medical * * * instruments and apparatus," is modified by two co-equal provisions: "Optical instruments * * *" and "Other". The first comparable provision, "Optical instruments" culminates in an all-inclusive provision "Optical instruments * * *: * * * Other". Consequently, the structure of the statute reveals that the provision "Optical instruments * * *: * * * Other" is exhaustive; that is, it embraces all other *optical* medical instruments and apparatus not specifically provided for. The second comparable provision, "Other" embraces *non-optical* medical instruments and apparatus.

[4] Thus, the question is not whether the imported fiberscopes are "more than" optical instruments but, rather, whether the imported fiberscopes are "Other" than optical instruments. See also *Friedman* v. *United States*, 50 CCPA 53, C.A.D. 819 (1963), and *Nevco Furniture Corp.* v. *United States*, 76 Cust. Ct. —, C.D. 4638 (1976).

The resolution of that issue is clear from its mere statement. As pointed out supra, the subject fiberscopes fulfill the Congressional definition of "optical instruments" contained in headnote 3. The subject fiberscopes cannot be both "Optical instruments," as defined by Congress, and something "Other" than "Optical instruments." We conclude, therefore, that the subject fiberscopes were properly classified under item 709.05, TSUS, as "Optical instruments * * *: * * * Other."

Appellee having failed to sustain its burden of overcoming the presumption of correctness of the original classification, its arguments in support of the claimed classification need not be discussed.

The judgment of the Customs Court is *reversed*.

BALDWIN, Judge, dissents.

Decisions of the United States Customs Court

Abstracts
Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *March 7, 1977.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P77/10	Watson, J. March 2, 1977	Brentwood Originals	69/34699, etc.	Item 366.60 40% or 38% Item 366.63 50% or 47.5%	Item 363.30 12.5% or 11.5%	Brentwood Originals v. U.S. (C.D.'s 4572, 4655)	Los Angeles Velveteen and corduroy covers for bolsters and bedrests
P77/11	Watson, J. March 2, 1977	Brentwood Originals	69/50804, etc.	Item 366.60 36% Item 366.63 45%	Item 363.30 11%	Brentwood Originals v. U.S. (C.D.'s 4572, 4655)	Los Angeles Velveteen and corduroy covers for bolsters and bedrests
P77/12	Watson, J. March 2, 1977	Brentwood Originals	70/42469, etc.	Item 366.63 50%	Item 363.30 12.5%	Brentwood Originals v. U.S. (C.D.'s 4572, 4655)	Los Angeles Velveteen and corduroy covers for bolsters and bedrests
P77/13	Ford, J. March 3, 1977	Border Brokerage Co., Inc.	74-9-02329	Item 207.00 11.5% (fence sections and fence gates marked "A") Item 202.54	Item 200.75 Free of duty (items marked "A") Item 200.60 Free of duty	Arthur J. Humphreys, Inc. v. U.S. (C.D. 4588, aff'd C.A.D. 1168) (items marked "A" and "B")	Blaine (Seattle) Red cedar fence sections, fence gates, etc. (items marked "A") Wood fence posts (items marked "B")

				5% (corner adapters and cleats marked "A"; fence posts marked "B")	(items marked "B")		
P77/14	Ford, J. March 3, 1977	Carson M. Simon & Co.	67/79138	Item 653.40 19%	Item 653.35 10.5%	U.S. v. Morris Friedman & Co. (C.A.D. 1156)	Philadelphia Candlesticks, candleholders, etc.
P77/15	Watson, J. March 3, 1977	Brentwood Originals	69/41531, etc.	Item 366.63 47.5% or 42.5%	Item 363.30 11.5% or 10.5%	Brentwood Originals v. U.S. (C.D.'s 4572, 4655)	Los Angeles Velveteen and corduroy covers for bolsters and bedrests
P77/16	Watson, J. March 3, 1977	Brentwood Originals	72-8-01745, etc.	Item 366.60 36%, 34% or 32% Item 366.63 45% or 42.5%	Item 363.30 11%, 10.5% or 10%	Brentwood Originals v. U.S. (C.D.'s 4572, 4655)	Los Angeles Velveteen and corduroy covers for bolsters and bedrests
P77/17	Watson, J. March 3, 1977	Brentwood Originals	73-12-03301	Item 366.60 32% Item 366.63 40% or 38%	Item 363.30 10% or 9.5%	Brentwood Originals v. U.S. (C.D.'s 4572, 4655)	Los Angeles; San Diego Velveteen and corduroy covers for bolsters and bedrests

Decisions of the United States Customs Court

Abstract

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R77/12	Landis, J. March 2, 1977	M. J. Feldman, Inc.	R67/13444	Constructed value	$5.62 (radio receivers), $0.08 (earphones), and $0.10 (batteries) each	Agreed statement of facts	New York Solid-state (tubeless) radio receivers, earphones, batteries

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U.S. Customs Service

Court of Customs and Patent Appeals

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